affirmatively gives rise to a distinct interest in the land. In such circumstances it would seem that the fact that he is the registered proprietor of an estate or interest under the Act may not prevent him lodging a caveat ... In *Re Grand Trunk Pacific Development Co Ltd* (1912) 7 DLR 611, 613, Lamont J stressed the requirement that a caveator must derive the interest which he claims through the transaction (in that case an unregistered agreement) on which the caveat is founded and not from his existing status as registered proprietor. I respectfully agree with that view ... An unduly extensive right to caveat could well lead to an unwarranted interference with the interests of others endeavouring to obtain registration of dealings. Moreover, the registered proprietor, in a case such as the present, is not without his remedy, for he may apply to this court for an interim injunction against registration.

In the event, it is my judgment that Siland merely as registered owner was not entitled to caveat its own interest and I have therefore to make an order in terms of the application that the caveat lodged by Siland be removed forthwith by the Registrar of Titles.

Order accordingly.

Solicitors: *KC Yap Kamaludin & Partners*; *Guna & Co*; *Arthur Lee, Yap & Netto.*

Reported by *Wong Kim Fatt*

Government of Malaysia v Chia Kee Teck

HIGH COURT (MALACCA) – CIVIL SUIT NO 21-169 OF 1984
WAN YAHYA J
16 AUGUST 1988

Revenue Law – Claim for additional taxes extending over 13 years – Whether s 91(1) of Income Tax Act 1967 permissive in nature – Whether 12-year limitation period applied to proceedings for recovery of tax – Claims can go beyond 12-year period if fraud, wilful default or negligence is proved – Income Tax Act 1967, s 91 – Limitation Ordinance 1953, s 33

Civil Procedure – Limitation – Claim by Revenue for additional taxes extending over 13 years – Whether claim is statute-barred – Whether 12-year limitation period applies to proceedings for recovery of tax – Section 91(1) of Income Tax Act 1967 permissive in nature – Claims can go beyond 12-year period if fraud, wilful default or negligence is proved – Income Tax Act 1967, s 91 – Limitation Ordinance 1953, s 33

The only issue raised in the appellant/defendant's appeal is on the authority of the Director General of Income Tax to impose additional taxes on the appellant/defendant extending over the period of 13 years. The appellant/defendant contended that under s 91 of the Income Tax Act 1967 ('the Act') the Revenue's claim is statute-barred if extended over the period of 12 years.

Held, dismissing the appeal:

(1) Section 91 of the Act has to be read with s 33 of the Limitation Ordinance 1953 which provides that limitation will not apply to any proceedings by the government for the recovery of tax.

(2) The word 'may' in s 91 denotes a permissive, rather than a restrictive, authority to the Director General to impose taxes within 12 years and the period of 12 years was specified in order to bring it within the purview of the Limitation Ordinance 1953. Consequently, s 91(1) of the Act, concomitantly read with s 33 of the Limitation Ordinance, would enable the Revenue to recover taxes beyond the 12-year period. The period of 12 years in s 91(1) has been rendered irrelevant by the proviso to s 33 of the Limitation Ordinance.

(3) Even if the 12-year period in s 91(1) is intended to be a limitation period, the Revenue action can still go beyond this period if it could be established that fraud or wilful default has been committed by or on behalf of any person or that person has been negligent.

Case referred to
1 *Arumugam Pillai* v *Government of Malaysia* [1976] 2 MLJ 72 (folld)

Legislation referred to
Income Tax Act 1967 ss 2, 91
Limitation Ordinance 1953 s 33

Rashid Ali for the appellant/defendant.
Abdul Karim bin Abdul Jalil for the respondent/plaintiff.

Cur Adv Vult

Wan Yahya J: The singular issue raised in this appeal is on the authority of the Director General of Income Tax to impose additional taxes on the appellant extending over the period of 13 years. Counsel for the appellant reading s 91 of the Act contends that the provisions therein would in effect preclude enforcement by the tax department for any claim extending over the period of 12 years or in other words claims which are statute-barred.

Subsection (1) of s 91 on which counsel based his argument reads:

> (1) The Director General, where for any year of assessment it appears to him that no or no sufficient assessment has been made on a person chargeable to tax, may in that year or within twelve years after its expiration make an assessment or additional assessment, as the case may be, in respect of that person in the amount or additional amount of chargeable income and tax or in the additional amount of tax in which, according to the best of the Director General's judgment, the assessment with respect to that person ought to have been made for that year.
>
> (2) Where the Director General discovers that the whole or part of any tax repaid to a person (otherwise than in consequence of an agreement come to with respect to an assessment pursuant to s 101(2) or in consequence of an assessment having been determined on appeal) has been repaid by mistake whether of fact or law, the Director General may make an assessment in respect of that person in the amount of that tax or that part of that tax, as the case may be:

Provided that no such assessment shall be made:
(a) if the repayment was in fact made on the basis of, or in accordance with, the practice of the Director General generally prevailing at the time when the repayment was made; or
(b) in respect of any tax, more than twelve years after the tax has been repaid.

(3) The Director General where it appears to him that:

(a) any form of fraud or wilful default has been committed by or on behalf of any person; or
(b) any person has been negligent,

in connection with or in relation to tax, may at any time make an assessment in respect of that person for any year of assessment for the purpose of making good any loss of tax attributable to the fraud, wilful default or negligence in question.

The above section, however, has to be read together with s 33 of the Limitation Ordinance 1953 which, inter alia, provides that limitation will not apply to any proceedings by the government for the recovery of tax.

In my interpretation the word 'may' in s 91 of the Income Tax Act denotes a permissive rather than restrictive authority to the Director General to impose taxes within 12 years and the period of 12 years was specified in order to bring it within the purview of the Limitation Ordinance 1953. Consequently s 91(1) of the Income Tax Act concomitantly read with s 33 of the Limitation Ordinance would enable the Revenue to recover taxes beyond the 12-year period. Reading these sections as a whole I am of the view that s 91(1) is permissive in nature and therefore not intended to be a limitation – the period of 12 years mentioned therein having been rendered irrelevant by the proviso to s 33 of the Limitation Ordinance.

This is the view taken by the Federal Court in the case of *Arumugam Pillai* v *Goverment of Malaysia*[1] in particular at p 73 where Gill CJ said:

> In our judgment limitation as such does not apply to any proceedings by the government for the recovery of any tax. This would seem clear from the proviso to s 33(1) of the Limitation Ordinance 1953. Reading s 91 of the Income Tax Act 1967 as a whole it would seem clear that, quite apart from any form of fraud, the words 'within twelve years after its expiration' are irrelevant where there has been any wilful default on the part of a taxpayer in disclosing part of his income for any particular year of assessment.

Even if my interpretation of the above is wrong and the 12-year period in s 91(1) is intended to be a limitation period, I would nevertheless hold that the Revenue action can go beyond this period if it could be established that fraud or wilful default has been committed by or on behalf of any person or that person has been negligent. Although para 7 of the statement of claim by the Revenue alleges that the plaintiff had neglected to pay the tax, the defendant had not refuted this allegation. The Director General is therefore authorized to make the assessment (which is defined in s 2 of the Act to include additional assessment) for the year dating back to 1968.

I therefore dismiss this appeal with costs.

Appeal dismissed.

Solicitors: *Tetuan Rashid Ali Co.*

Reported by *Ng Sheau Jiuan*

Public Prosecutor v Teo Kok Keng

HIGH COURT (SIBU) – CRIMINAL REVISION NO 1 OF 1988
CHONG SIEW FAI J
11 AUGUST 1988

Road Traffic – Driving offences under Road Traffic Ordinance 1958 – Conviction of – Road Transport Act 1987 already in force on date of commission of offences – Provisions in both statutes substantially the same in relation to offence charges – Whether errors in charge vitiated convictions – Whether amendments prejudicial to accused

Road Traffic – Offence of using motor vehicle without valid third-party insurance – Conviction of – Sentence of disqualification from driving for six months – Whether 'special reasons' were shown for exemption from statutory minimum of 12 months' disqualification – Whether trial court erred in sentencing – Road Transport Act 1987, s 90(2)

Criminal Procedure – Sentencing – Disqualification from driving for six months for offence of using motor vehicle without valid third-party insurance – Whether 'special reasons' were shown for exemption from statutory minimum of 12 months' disqualification – Whether trial court erred – Road Transport Act 1987, s 90(2)

Words and Phrases – 'Special reasons'

The accused was convicted of four offences under the Road Traffic Ordinance 1958. He was fined and disqualified from holding and obtaining a Group D driving licence for six months. All the offences were committed on 3 January 1988 by which date the Road Traffic Ordinance ('the 1958 Ordinance') had already been repealed and the Road Transport Act 1987 ('the 1987 Act') had come into force. As such, the accused should have been charged with the four offences under the 1987 Act.

The case came up for revision at the instance of the prosecution and the issue was whether the errors were so serious as would vitiate the four convictions. The court also had to consider whether the learned trial magistrate had erred in imposing a disqualification of six months.

Held:

(1) The ingredients required to be proved in respect of the four offences were the same whether the charges were framed under the 1987 Act or under the 1958 Ordinance. The errors